

## TITLE 15—COMMERCE AND TRADE

Chap.		Sec.	Chap.		Sec.
1.	Monopolies and Combinations in Restraint of Trade .....	1	21.	National Policy on Employment and Productivity .....	1021
2.	Federal Trade Commission; Promotion of Export Trade and Prevention of Unfair Methods of Competition.....	41	22.	Trade-Marks.....	1051
2A.	Securities and Trust Indentures.....	77a	23.	Dissemination of Technical, Scientific and Engineering Information.....	1151
2B.	Securities Exchanges .....	78a	24.	Transportation of Gambling Devices ....	1171
2B-1.	Securities Investor Protection .....	78aaa	25.	Flammable Fabrics.....	1191
2C.	Public Utility Holding Companies.....	79	26.	Household Refrigerators.....	1211
2D.	Investment Companies and Advisers ....	80a-1	27.	Automobile Dealer Suits Against Manufacturers .....	1221
2E.	Omnibus Small Business Capital Formation .....	80c	28.	Disclosure of Automobile Information .....	1231
3.	Trade-Marks.....	81	29.	Manufacture, Transportation, or Distribution of Switchblade Knives.....	1241
4.	China Trade .....	141	30.	Hazardous Substances.....	1261
5.	Statistical and Commercial Information.....	171	31.	Destruction of Property Moving in Commerce.....	1281
6.	Weights and Measures and Standard Time .....	201	32.	Telecasting of Professional Sports Contests.....	1291
7.	National Institute of Standards and Technology .....	271	33.	Brake Fluid Regulation [Repealed].....	1301
7A.	Standard Reference Data Program .....	290	34.	Antitrust Civil Process .....	1311
8.	Falsely Stamped Gold or Silver or Goods Manufactured Therefrom.....	291	35.	Seat Belt Regulation [Repealed] .....	1321
9.	National Weather Service .....	311	36.	Cigarette Labeling and Advertising.....	1331
9A.	Weather Modification Activities or Attempts; Reporting Requirement.....	330	37.	State Technical Services .....	1351
10.	War Finance Corporation.....	331	38.	Traffic and Motor Vehicle Safety .....	1381
10A.	Collection of State Cigarette Taxes .....	375	39.	Fair Packaging and Labeling Program .....	1451
10B.	State Taxation of Income from Interstate Commerce.....	381	39A.	Special Packaging of Household Substances for Protection of Children ....	1471
11.	Caustic Poisons .....	401	40.	Department of Commerce.....	1501
12.	Discrimination Against Farmers' Cooperative Associations by Boards of Trade.....	431	41.	Consumer Credit Protection .....	1601
13.	Textile Foundation .....	501	42.	Interstate Land Sales.....	1701
13A.	Fishing Industry .....	521	43.	Newspaper Preservation.....	1801
14.	Reconstruction Finance Corporation ..	601	44.	Protection of Horses .....	1821
14A.	Aid to Small Business.....	631	45.	Emergency Loan Guarantees to Business Enterprises .....	1841
14B.	Small Business Investment Program....	661	45A.	Chrysler Corporation Loan Guarantee [Omitted] .....	1861
15.	Economic Recovery.....	701	46.	Motor Vehicle Information and Cost Savings .....	1901
15A.	Interstate Transportation of Petroleum Products.....	715	47.	Consumer Product Safety .....	2051
15B.	Natural Gas.....	717	48.	Hobby Protection.....	2101
15C.	Alaska Natural Gas Transportation.....	719	49.	Fire Prevention and Control.....	2201
16.	Emergency Relief.....	721	50.	Consumer Product Warranties.....	2301
16A.	Emergency Petroleum Allocation [Omitted] .....	751	51.	National Productivity and Quality of Working Life.....	2401
16B.	Federal Energy Administration .....	761	52.	Electric and Hybrid Vehicle Research, Development, and Demonstration ....	2501
16C.	Energy Supply and Environmental Coordination.....	791	53.	Toxic Substances Control .....	2601
17.	Production, Marketing, and Use of Bituminous Coal [Repealed] .....	801	54.	Automotive Propulsion Research and Development .....	2701
18.	Transportation of Firearms [Repealed].....	901	55.	Petroleum Marketing Practices.....	2801
19.	Miscellaneous .....	1001	56.	National Climate Program .....	2901
20.	Regulation of Insurance .....	1011	57.	Interstate Horseracing.....	3001
			58.	Full Employment and Balanced Growth.....	3101
			59.	Retail Policies for Natural Gas Utilities .....	3201

Chap.		Sec.	Sec.	
60.	Natural Gas Policy .....	3301	15.	Suits by persons injured.
61.	Soft Drink Interbrand Competition .....	3501		(a) Amount of recovery; prejudgment interest.
62.	Condominium and Cooperative Conversion Protection and Abuse Relief. ....	3601		(b) Amount of damages payable to foreign states and instrumentalities of foreign states.
63.	Technology Innovation .....	3701		(c) Definitions.
64.	Methane Transportation Research, Development, and Demonstration .....	3801	15a.	Suits by United States; amount of recovery; prejudgment interest.
65.	Liability Risk Retention .....	3901	15b.	Limitation of actions.
66.	Promotion of Export Trade .....	4001	15c.	Actions by State attorneys general.
67.	Arctic Research and Policy .....	4101		(a) Parens patriae; monetary relief; damages; prejudgment interest.
68.	Land Remote-Sensing Commercialization .....	4201		(b) Notice; exclusion election; final judgment.
69.	Cooperative Research .....	4301		(c) Dismissal or compromise of action.
70.	Comprehensive Smokeless Tobacco Health Education .....	4401		(d) Attorneys' fees.
71.	Petroleum Overcharge Distribution and Restitution .....	4501	15d.	Measurement of damages.
72.	Semiconductor Research .....	4601	15e.	Distribution of damages.
73.	Export Enhancement .....	4701	15f.	Actions by Attorney General.
74.	Competitiveness Policy Council .....	4801		(a) Notification to State attorney general.
75.	National Trade Data Bank .....	4901		(b) Availability of files and other materials.
76.	Imitation Firearms .....	5001	15g.	Definitions.
77.	Steel and Aluminum Energy Conservation and Technology Competitiveness .....	5101	15h.	Applicability of parens patriae actions.
78.	Superconductivity and Competitiveness .....	5201	16.	Judgments.
				(a) Prima facie evidence; collateral estoppel.
				(b) Consent judgments and competitive impact statements; publication in Federal Register; availability of copies to the public.
				(c) Publication of summaries in newspapers.
				(d) Consideration of public comments by Attorney General and publication of response.
				(e) Public interest determination.
				(f) Procedure for public interest determination.
				(g) Filing of written or oral communications with the district court.
				(h) Inadmissibility as evidence of proceedings before the district court and the competitive impact statement.
				(i) Suspension of limitations.
			17.	Antitrust laws not applicable to labor organizations.
			18.	Acquisition by one corporation of stock of another.
			18a.	Premerger notification and waiting period.
				(a) Filing.
				(b) Waiting period; publication; voting securities.
				(c) Exempt transactions.
				(d) Commission rules.
				(e) Additional information; waiting period extensions.
				(f) Preliminary injunctions; hearings.
				(g) Civil penalty; compliance; power of court.
				(h) Disclosure exemption.
				(i) Construction with other laws.
				(j) Report to Congress; legislative recommendations.
			19.	Interlocking directorates and officers.
			19a.	Repealed.
			20.	Purchases by common carriers in case of interlocking directorates, etc.
			21.	Enforcement provisions.
				(a) Commission, Board, or Secretary authorized to enforce compliance.
				(b) Issuance of complaints for violations; hearing; intervention; filing of testimony; report; cease and desist orders; reopening and alteration of reports or orders.

#### CHAPTER 1—MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE

Sec.		
1.	Trusts, etc., in restraint of trade illegal; penalty.	
2.	Monopolizing trade a felony; penalty.	
3.	Trusts in Territories or District of Columbia illegal; combination a felony.	
4.	Jurisdiction of courts; duty of United States attorneys; procedure.	
5.	Bringing in additional parties.	
6.	Forfeiture of property in transit.	
6a.	Conduct involving trade or commerce with foreign nations.	
7.	"Person" or "persons" defined.	
8.	Trusts in restraint of import trade illegal; penalty.	
9.	Jurisdiction of courts; duty of United States attorneys; procedure.	
10.	Bringing in additional parties.	
11.	Forfeiture of property in transit.	
12.	Definitions; short title.	
13.	Discrimination in price, services, or facilities.	
	(a) Price; selection of customers.	
	(b) Burden of rebutting prima-facie case of discrimination.	
	(c) Payment or acceptance of commission, brokerage, or other compensation.	
	(d) Payment for services or facilities for processing or sale.	
	(e) Furnishing services or facilities for processing, handling, etc.	
	(f) Knowingly inducing or receiving discriminatory price.	
13a.	Discrimination in rebates, discounts, or advertising service charges; underselling in particular localities; penalties.	
13b.	Cooperative association; return of net earnings or surplus.	
13c.	Exemption of non-profit institutions from price discrimination provisions.	
14.	Sale, etc., on agreement not to use goods of competitor.	

Sec.

- (c) Review of orders; jurisdiction; filing of petition and record of proceeding; conclusiveness of findings; additional evidence; modification of findings; finality of judgment and decree.
- (d) Exclusive jurisdiction of Court of Appeals.
- (e) Liability under antitrust laws.
- (f) Service of complaints, orders and other processes.
- (g) Finality of orders generally.
- (h) Finality of orders modified by Supreme Court.
- (i) Finality of orders modified by Court of Appeals.
- (j) Finality of orders issued on rehearing ordered by Court of Appeals or Supreme Court.
- (k) "Mandate" defined.
- (l) Penalties.
- 21a. Actions and proceedings pending prior to June 19, 1936; additional and continuing violations.
- 22. District in which to sue corporation.
- 23. Suits by United States; subpoenas for witnesses.
- 24. Liability of directors and agents of corporation.
- 25. Restraining violations; procedure.
- 26. Injunctive relief for private parties; exception; costs.
- 26a. Restrictions on the purchase of gasoline and synthetic motor fuel.
  - (a) Limitations on the use of credit instruments; sales, resales, and transfers.
  - (b) Credit fees; equivalent conventional motor fuel sales; labeling of pumps; product liability disclaimers; advertising support; furnishing facilities.
  - (c) "United States" defined.
- 27. Effect of partial invalidity.
- 28. Repealed.
- 29. Appeals.
  - (a) Court of appeals; review by Supreme Court.
  - (b) Direct appeals to Supreme Court.
- 30. Depositions for use in suits in equity; proceedings open to public.
- 31. Panama Canal closed to violators of anti-trust laws.
- 32, 33. Repealed.
- 34. Definitions applicable to sections 34 to 36.
- 35. Recovery of damages, etc., for antitrust violations from any local government, or official or employee thereof acting in an official capacity.
  - (a) Prohibition in general.
  - (b) Preconditions for attachment of prohibition; prima facie evidence for nonapplication of prohibition.
- 36. Recovery of damages, etc., for antitrust violations on claim against person based on official action directed by local government, or official or employee thereof acting in an official capacity.
  - (a) Prohibition in general.
  - (b) Nonapplication of prohibition for cases commenced before effective date of provisions.

## HISTORICAL NOTE

This chapter includes among other statutory provisions the Sherman Act, comprising sections 1 to 7 of this title, the Clayton Act, comprising sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title and sections 52 and 53 of Title 29, Labor, the Wilson Tariff Act, comprising sections 8 and 9 of this title, the Robinson-

Patman Price Discrimination Act, comprising sections 13, 13a, 13b, and 21a of this title, the "Expediting Act", sections 28 and 29 of this title, and the "Hart-Scott-Rodino Antitrust Improvements Act of 1976", comprising sections 15c to 15h, 18a, and 66 of this title. For complete classification of the Hart-Scott-Rodino Act, see Short Title note under section 1 of this title.

## CONGRESSIONAL INVESTIGATION OF MONOPOLY

Joint Res. June 16, 1938, ch. 456, 52 Stat. 705, created a Temporary National Economic Committee which was authorized to make a full investigation on monopoly and the concentration of economic power in and financial control over production and distribution of goods and services.

The time for submitting the final report under Joint Res. June 16, 1938, ch. 456, 52 Stat. 705, as amended Apr. 26, 1939, ch. 104, §§ 1, 2, 53 Stat. 624, was extended to Apr. 3, 1941, by Joint Res. Dec. 16, 1940, ch. 932, 54 Stat. 1225.

The committee's report was presented to Congress on March 31, 1941, and was published in Senate Document No. 35.

## EXECUTIVE ORDER NO. 12022

Ex. Ord. No. 12022, Dec. 1, 1977, 42 F.R. 61441, as amended by Ex. Ord. No. 12052, Apr. 7, 1978, 43 F.R. 15133, which related to the National Commission for the Review of Antitrust Laws and Procedures, was revoked by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

## CROSS REFERENCES

Arbitration of controversies arising out of maritime contracts or transactions, see section 1 et seq. of Title 9, Arbitration.

Associations engaged in catching and marketing aquatic products, see section 522 of this title.

Associations of producers of agriculture products monopolizing or restraining trade and unduly enhancing prices, see section 292 of Title 7, Agriculture.

Automobile dealer suits against manufacturers, see chapter 27 of this title.

Bids for services and supplies for armed forces violating anti-trust laws, reference to Attorney General, see section 2305 of Title 10, Armed Forces.

## Carriers—

Agreements between carriers as to rates, spares, etc., see section 10706 of Title 49, Transportation.

Combinations to prevent continuous carriage of freight prohibited, see section 10745 of Title 49. Consolidation or merger as relieving from operation of anti-trust laws, see section 11341 of Title 49.

Department of Commerce, see section 1501 et seq. of this title.

District courts, original jurisdiction of any civil action or proceeding arising under this chapter, see section 1337 of Title 28, Judiciary and Judicial Procedure.

Electrical energy, monopolistic combinations prohibited, see section 803 of Title 16, Conservation.

## Exemptions from anti-trust laws—

Marketing agreements of Secretary of Agriculture with manufacturers and others engaged in handling anti-hog-cholera serum and hog-cholera virus, see section 852 of Title 7, Agriculture.

Marketing agreements of Secretary of Agriculture with processors, producers, associations of producers, and others engaged in handling any agricultural commodity or product thereof, see section 608b of Title 7.

Meetings, awards, and agreements concerning marketing of milk or its products, see section 671 of Title 7.

Export trade, applicability of sections 1 to 7 of this title, see section 62 of this title.

**Federal Trade Commission—**

Investigation of compliance with anti-trust decrees and violation of anti-trust statutes, and recommendations for readjustment of business of offending corporations, see section 46 of this title. Reference of equity suits to commission, see section 47 of this title.

**Import trade—**

Sale of imported articles at less than market value or wholesale price prohibited, see section 72 of this title.

Unfair methods of competition and unfair practices in import trade as unlawful, see section 1337 of Title 19, Customs Duties.

Insurance business as subject to this chapter, see sections 1012 and 1013 of this title.

Packers or live poultry dealers restraining commerce or creating a monopoly, see section 192 of Title 7, Agriculture.

**Radio—**

Competition in commerce, see section 314 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

Manufacture or sale, see section 313 of Title 47.

Telecasting of professional sports contests, antitrust laws exemption, see section 1291 et seq. of this title.

Tobacco control, compacts between states, see section 515 of Title 7, Agriculture.

**ANTITRUST ACTS AND LAWS DEFINED IN OTHER SECTIONS**

Antitrust acts and laws are defined in sections 12, 44, 1311, 1802, 3301, 3503, 4002, 4021, 4301 of this title; title 10 section 7430; title 12 sections 1828, 1849; title 16 section 2802; title 17 section 109; title 28 section 1407; title 30 sections 184, 1413; title 33 section 1502; title 40 section 488; title 42 sections 5417, 5909, 6202, 8235f, 9102; title 43 sections 1331, 1770; title 45 section 791; title 46 App. section 1702; title 49 section 10706; title 49 App. section 1384; title 50 App. sections 1941a, 2158.

**81. Trusts, etc., in restraint of trade illegal; penalty**

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, § 1, 26 Stat. 209; Aug. 17, 1937, ch. 690, title VIII, 50 Stat. 693; July 7, 1955, ch. 281, 69 Stat. 282; Dec. 21, 1974, Pub. L. 93-528, § 3, 88 Stat. 1708; Dec. 12, 1975, Pub. L. 94-145, § 2, 89 Stat. 801.)

**AMENDMENTS**

1975—Pub. L. 94-145 struck out from first sentence two provisos granting anti-trust exemption to State fair trade laws.

1974—Pub. L. 93-528 substituted "a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years" for "a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year".

1955—Act July 7, 1955, substituted "fifty thousand dollars" for "five thousand dollars".

1937—Act Aug. 17, 1937, inserted two provisos.

**EFFECTIVE DATE OF 1975 AMENDMENT**

Section 4 of Pub. L. 94-145 provided that: "The amendments made by sections 2 and 3 of this Act [amending sections 1 and 45 of this title] shall take effect upon the expiration of the ninety-day period which begins on the date of enactment of this Act [Dec. 12, 1975]."

**SHORT TITLE OF 1984 AMENDMENT**

Pub. L. 98-544, § 1, Oct. 24, 1984, 98 Stat. 2750, provided: "That this Act [enacting sections 34 to 36 of this title and provisions set out as a note under section 34 of this title] may be cited as the 'Local Government Antitrust Act of 1984'."

**SHORT TITLE OF 1982 AMENDMENT**

Pub. L. 97-290, title IV, § 401, Oct. 8, 1982, 96 Stat. 1246, provided that: "This title [enacting section 6a of this title and amending section 45 of this title] may be cited as the 'Foreign Trade Antitrust Improvements Act of 1982'."

**SHORT TITLE OF 1980 AMENDMENT**

Pub. L. 96-493, § 1, Dec. 2, 1980, 94 Stat. 2568, provided: "That this Act [enacting section 26a of this title] may be cited as the 'Gasohol Competition Act of 1980'."

**SHORT TITLE OF 1976 AMENDMENT**

Section 1 of Pub. L. 94-435, Sept. 30, 1976, 90 Stat. 1383, provided: "That this Act [enacting sections 15c to 15h, 18a, and 66 of this title, amending sections 12, 15b, 16, 26, and 1311 to 1314 of this title, section 1505 of Title 18, Crimes and Criminal Procedure, and section 1407 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 1, 8, 15c, 18a, and 1311 of this title] may be cited as the 'Hart-Scott-Rodino Antitrust Improvements Act of 1976'."

**SHORT TITLE OF 1975 AMENDMENT**

Section 1 of Pub. L. 94-145 provided: "That this Act [amending sections 1 and 45 of this title and enacting provisions set out as a note under section 1 of this title] may be cited as the 'Consumer Goods Pricing Act of 1975'."

**SHORT TITLE OF 1974 AMENDMENT**

Section 1 of Pub. L. 93-528 provided: "That this Act [amending sections 1, 2, 3, 16, 28, and 29 of this title, section 401 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and sections 43, 44, and 45 of former Title 49, Transportation, and enacting provisions set out as notes under sections 1 and 29 of this title] may be cited as the 'Antitrust Procedures and Penalties Act'."

**SHORT TITLE**

Pub. L. 94-435, title III, § 305(a), Sept. 30, 1976, 90 Stat. 1397, added immediately following the enacting clause of act July 2, 1890, the following: "That this Act [sections 1 to 7 of this title] may be cited as the 'Sherman Act'."

**CROSS REFERENCES**

Antitrust laws inapplicable to labor organizations, see section 17 of this title.

Carriers relieved from operation of this chapter, see section 11341 of Title 49, Transportation.

Combinations in restraint of import trade, see section 8 of this title.

Conspiracy to commit offense or to defraud United States, see section 371 of Title 18, Crimes and Criminal Procedure.

Discrimination in price, services or facilities, see section 13 of this title.

Fishing industry, restraints of trade in, see section 522 of this title.

Monopolies prohibited, see section 2 of this title.

Trusts in territories or District of Columbia prohibited, see section 3 of this title.

#### SHERMAN ACT REFERRED TO IN OTHER SECTIONS

The Sherman Act [15 U.S.C. 1 to 7] is referred to in sections 12, 15c, 15d, 29, 30, 31, 44, 62, 1012, 1013, 3301, 3503 of this title; title 7 section 225; title 8 section 1251; title 10 section 7430; title 12 sections 1828, 1849; title 16 section 2602; title 30 sections 184, 1413; title 33 section 1502; title 40 section 488; title 42 sections 2135, 5417, 5909, 6202, 8235f, 9102; title 43 sections 970, 1331, 1770; title 45 section 791; title 46 App. sections 814, 1702; title 49 section 10706; title 50 App. sections 1941a, 2158.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4, 6, 6a, 7, 18a of this title.

### § 2. Monopolizing trade a felony; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, § 2, 26 Stat. 209; July 7, 1955, ch. 281, 69 Stat. 282; Dec. 21, 1974, Pub. L. 93-528, § 3, 88 Stat. 1708.)

#### AMENDMENTS

1974—Pub. L. 93-528 substituted “a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years” for “a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year”.

1955—Act July 7, 1955, substituted “fifty thousand dollars” for “five thousand dollars”.

#### CROSS REFERENCES

Antitrust laws inapplicable to labor organizations, see section 17 of this title.

Carriers relieved from operation of this chapter, see section 11341 of Title 49, Transportation.

Combinations in restraint of import trade, see section 8 of this title.

Conspiracy to commit offense or to defraud United States, see section 371 of Title 18, Crimes and Criminal Procedure.

Discrimination in price, services or facilities, see section 13 of this title.

Fishing industry, monopolies in, see section 522 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 18a of this title; title 12 section 1849.

### § 3. Trusts in Territories or District of Columbia illegal; combination a felony

Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, § 3, 26 Stat. 209; July 7, 1955, ch. 281, 69 Stat. 282; Dec. 21, 1974, Pub. L. 93-528, § 3, 88 Stat. 1708.)

#### AMENDMENTS

1974—Pub. L. 93-528 substituted “a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years” for “a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year”.

1955—Act July 7, 1955, substituted “fifty thousand dollars” for “five thousand”.

#### CROSS REFERENCES

Antitrust laws inapplicable to labor organizations, see section 17 of this title.

Carriers relieved from operation of this chapter, see section 11341 of Title 49, Transportation.

Combinations in restraint of import trade, see section 8 of this title.

Conspiracy to commit offense or to defraud United States, see section 371 of Title 18, Crimes and Criminal Procedure.

Discrimination in price, services or facilities, see section 13 of this title.

### § 4. Jurisdiction of courts; duty of United States attorneys; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

(July 2, 1890, ch. 647, § 4, 26 Stat. 209; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

#### CODIFICATION

Act Mar. 3, 1911, vested jurisdiction in "district" courts, instead of "circuit" courts.

#### CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys of the United States". See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

#### FEDERAL RULES OF CIVIL PROCEDURE

Commencement of action by filing a complaint with the court, see rule 3, Title 28, Appendix, Judiciary and Judicial Procedure.

Continuation of section under rule 65, see note by Advisory Committee under rule 65.

Injunctions, see rule 65.

One form of action, see rule 2.

Pleadings allowed, see rule 7.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at law or in equity, see rule 1.

#### CROSS REFERENCES

Issuance of injunctions in labor disputes, see sections 52 and 107 of Title 29, Labor.

Restraining trusts in restraint of import trade, see section 9 of this title.

Restraining violations of Clayton Act, see sections 25 and 26 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5 of this title.

### § 5. Bringing in additional parties

Whenever it shall appear to the court before which any proceeding under section 4 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

(July 2, 1890, ch. 647, § 5, 26 Stat. 210.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Adding or dropping parties, see rule 21, Title 28, Appendix, Judiciary and Judicial Procedure.

Continuance of section under rule 4, see note by Advisory Committee under rule 4.

Process, see rule 4.

#### CROSS REFERENCES

Bringing in additional parties, see, also, sections 10 and 25 of this title.

### § 6. Forfeiture of property in transit

Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section 1 of this title, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

(July 2, 1890, ch. 647, § 6, 26 Stat. 210.)

#### CROSS REFERENCES

Fines, penalties, and forfeitures, see chapter 163 of Title 28, Judiciary and Judicial Procedure.

Forfeiture of property in transit, see, also, section 11 of this title.

### § 6a. Conduct involving trade or commerce with foreign nations

Sections 1 to 7 of this title shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless—

(1) such conduct has a direct, substantial, and reasonably foreseeable effect—

(A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or

(B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and

(2) such effect gives rise to a claim under the provisions of sections 1 to 7 of this title, other than this section.

If sections 1 to 7 of this title apply to such conduct only because of the operation of paragraph (1)(B), then sections 1 to 7 of this title shall apply to such conduct only for injury to export business in the United States.

(July 2, 1890, ch. 647, § 7, as added Oct. 8, 1982, Pub. L. 97-290, title IV, § 402, 96 Stat. 1246.)

#### PRIOR PROVISIONS

A prior section 7 of act July 2, 1890, ch. 647, 26 Stat. 210, which related to suits by persons injured by acts in violation of sections 1 to 7 of this title, and which was classified as a note under section 15 of this title, was repealed by act July 7, 1955, ch. 283, § 3, 69 Stat. 283.

### § 7. "Person" or "persons" defined

The word "person", or "persons", wherever used in sections 1 to 7 of this title shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(July 2, 1890, ch. 647, § 8, 26 Stat. 210.)

#### CROSS REFERENCES

Definition of person, see, also, section 12 of this title.  
Liability of corporate directors and agents for violation of antitrust laws, see section 24 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6a of this title.

### § 8. Trusts in restraint of import trade illegal; penalty

Every combination; conspiracy, trust, agreement, or contract is declared to be contrary to public policy, illegal, and void when the same is made by or between two or more persons or corporations, either of whom, as agent or principal, is engaged in importing any article from any foreign country into the United States, and

when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who shall be engaged in the importation of goods or any commodity from any foreign country in violation of this section, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and on conviction thereof in any court of the United States such person shall be fined in a sum not less than \$100 and not exceeding \$5,000, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months.

(Aug. 27, 1894, ch. 349, § 73, 28 Stat. 570; Feb. 12, 1913, ch. 40, 37 Stat. 667.)

#### AMENDMENTS

1913—Act Feb. 12, 1913, inserted “as agent or principal”.

#### SHORT TITLE

Section 78 of act Aug. 27, 1894, as added by Pub. L. 94-435, title III, § 305(d), Sept. 30, 1976, 90 Stat. 1397, provided that: “Sections 73, 74, 75, 76, and 77 of this Act [sections 8 to 11 of this title] may be cited as the ‘Wilson Tariff Act.’”

#### CROSS REFERENCES

Combinations in restraint of trade or commerce, see section 1 of this title.

Immunity of witnesses, see section 6001 of Title 18, Crimes and Criminal Procedure.

Monopolies in restraint of trade or commerce, see section 2 of this title.

Panama Canal closed to violators of antitrust laws, see section 31 of this title.

#### WILSON TARIFF ACT REFERRED TO IN OTHER SECTIONS

The Wilson Tariff Act [15 U.S.C. 8 to 11] is referred to in sections 12, 31, 44 of this title; title 7 section 225; title 16 section 2602, title 30 section 1413; title 42 section 2135; title 43 section 1331; title 46 App. section 814; title 49 section 10706.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9, 11, 3301 of this title; title 10 section 7430; title 16 section 2602; title 30 section 184; title 33 section 1502; title 40 section 488; title 42 sections 5417, 5909, 6202, 8235f, 9102; title 43 section 1770; title 45 section 791; title 46 App. section 1702; title 49 section 10706; title 50 App. sections 1941a, 2158.

#### § 9. Jurisdiction of courts; duty of United States attorneys; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of section 8 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petitions setting forth the case and praying that such violations shall be en-

joined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

(Aug. 27, 1894, ch. 349, § 74, 28 Stat. 570; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

#### CODIFICATION

Act Mar. 3, 1911, vested jurisdiction in “district” courts, instead of “circuit” courts.

#### CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted “United States attorneys” for “district attorneys of the United States”. See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

#### FEDERAL RULES OF CIVIL PROCEDURE

Commencement of action by filing a complaint with the court, see rule 3, Title 28, Appendix, Judiciary and Judicial Procedure.

Injunctions, see rule 65.

One form of action, see rule 2.

Pleadings allowed, see rule 7.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at law or in equity, see rule 1.

#### CROSS REFERENCES

Issuance of injunctions in labor disputes, see sections 52 and 107 of Title 29, Labor.

Restraining violations of Clayton Act, see sections 25 and 26 of this title.

Restraining violations of Sherman Act, see section 4 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10, 3301 of this title; title 10 section 7430; title 16 section 2602; title 30 section 184; title 33 sections 1331, 1502; title 40 section 488; title 42 sections 5417, 5909, 6202, 8235f, 9102; title 43 section 1770; title 45 section 791; title 46 App. section 1702; title 49 section 10706; title 50 App. sections 1941a, 2158.

#### § 10. Bringing in additional parties

Whenever it shall appear to the court before which any proceeding under section 9 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

(Aug. 27, 1894, ch. 349, § 75, 28 Stat. 570.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Modification of section by rule 4, see note by Advisory Committee under rule 4, Title 28, Appendix, Judiciary and Judicial Procedure.

Process, see rule 4.

#### CROSS REFERENCES

Additional parties, see, also, sections 5 and 25 of this title.

### § 11. Forfeiture of property in transit

Any property owned under any contract or by any combination, or pursuant to any conspiracy, and being the subject thereof, mentioned in section 8 of this title, imported into and being within the United States or being in the course of transportation from one State to another, or to or from a Territory or the District of Columbia, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

(Aug. 27, 1894, ch. 349, § 76, 28 Stat. 570; Feb. 12, 1913, ch. 40, 37 Stat. 667.)

#### AMENDMENTS

1913—Act Feb. 12, 1913, substituted “imported into and being within the United States or” for “and”.

#### CROSS REFERENCES

Fines, penalties, and forfeitures, see chapter 163 (§ 2461 et seq.) of Title 28, Judiciary and Judicial Procedure.

Forfeiture of property in transit, see, also, section 6 of this title.

### § 12. Definitions; short title

(a) “Antitrust laws,” as used herein, includes the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety; sections seventy-three to seventy-seven, inclusive, of an Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled “An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’” approved February twelfth, nineteen hundred and thirteen; and also this Act.

“Commerce,” as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

The word “person” or “persons” wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(b) This Act may be cited as the “Clayton Act”.

(Oct. 15, 1914, ch. 323, § 1, 38 Stat. 730; Sept. 30, 1976, Pub. L. 94-435, title III, § 305(b), 90 Stat. 1397.)

#### REFERENCES IN TEXT

Words “herein” and “this Act”, referred to in the three paragraphs of subsec. (a), mean the Clayton Act. For classification of the Clayton Act to the Code, see last paragraph hereunder.

The Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety, referred to in subsec. (a), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of this title.

The Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” of August twenty-seventh, eighteen hundred and ninety-four, referred to in subsec. (a), is act Aug. 27, 1894, ch. 349, 28 Stat. 509, as amended, known as the Wilson Tariff Act. Sections seventy-three to seventy-six thereof are set out as sections 8 to 11 of this title. Section seventy-seven thereof was not classified to the Code.

The Act entitled “An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’” approved February twelfth, nineteen hundred and thirteen, referred to in subsec. (a), is act Feb. 12, 1913, ch. 40, 37 Stat. 667, as amended, which is classified to sections 8 and 11 of this title.

The Clayton Act, referred to in subsec. (b), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. Sections 9 and 21 to 25 of the act were repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948, and their provisions are now covered by sections 402, 660, 3285 and 3691 of Title 18, Crimes and Criminal Procedure, except that former section 23 of the act is obsolete and not now covered. Sections 17 to 19 of the act were repealed by act June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948, and their provisions are now covered by rule 65 of the Federal Rules of Civil Procedure, Title 28, Appendix, Judiciary and Judicial Procedure. For complete classification of this Act to the Code, see Tables.

#### CODIFICATION

The 3d par. of subsec. (a) is also classified to section 53 of Title 29, Labor.

#### AMENDMENTS

1976—Pub. L. 94-435 designated existing provisions as subsec. (a) and added subsec. (b).

#### CROSS REFERENCES

Federal Aviation Act of 1958, antitrust exemption under, see section 1384 of Title 49, Appendix, Transportation.

Insurance business, applicability of sections 12 to 27 to, see section 1011 et seq. of this title.

#### CLAYTON ACT REFERRED TO IN OTHER SECTIONS

The Clayton Act [see References in Text note above] is referred to in sections 35, 44, 1012, 1013, 3301, 3503 of this title; title 7 section 225; title 10 section 7430; title 12 sections 1828, 1849, 3208; title 16 section 2602; title 30 sections 184, 1413; title 33 sections 1331, 1502; title 40 section 488; title 42 sections 2135, 5417, 5909, 6202, 8235f, 9102; title 43 section 1770; title 45 section 791; title 46 App. section 1702; title 49 section 10706; title 50 App. sections 1941a, 2158.



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 34, 1291, 1311, 4002, 4021, 4301 of this title; title 17 section 109; title 19 sections 2033, 2561; title 28 section 1407; title 46 App. section 885; title 49 sections 10706, 10708, 10934, 11110; title 49 App. sections 1301, 1384.

## § 13. Discrimination in price, services, or facilities

## (a) Price; selection of customers

It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided*, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: *Provided, however*, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: *And provided further*, That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

## (b) Burden of rebutting prima-facie case of discrimination

Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification

shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however*, That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

## (c) Payment or acceptance of commission, brokerage, or other compensation

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

## (d) Payment for services or facilities for processing or sale

It shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

## (e) Furnishing services or facilities for processing, handling, etc.

It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

## (f) Knowingly inducing or receiving discriminatory price

It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

(Oct. 15, 1914, ch. 323, § 2, 38 Stat. 730; June 19, 1936, ch. 592, § 1, 49 Stat. 1526.)

## AMENDMENTS

1936—Act June 19, 1936, amended section generally.

## SHORT TITLE

Act June 19, 1936, which amended this section and added sections 13a, 13b, and 21a of this title, is popularly known as the Robinson-Patman Anti-Discrimination Act and also as the Robinson-Patman Price Discrimination Act.

## CROSS REFERENCES

Administrative authority to enforce compliance with this section, see section 21 of this title.

Exemption of non-profit institutions from provisions of this section, see section 13c of this title.

Power of Federal Trade Commission to prevent unfair trade practices, see section 45 of this title.

## ROBINSON-PATMAN ANTI-DISCRIMINATION ACT REFERRED TO IN OTHER SECTIONS

The Robinson-Patman Anti-Discrimination Act [15 U.S.C. 13 to 13b, 21a] is referred to in sections 13b, 13c, 21a, 1013, 3301 of this title; title 10 section 7430; title 16 section 2602; title 30 sections 184, 1413; title 42 sections 5909, 6202; title 43 section 1331; title 45 section 791; title 46 App. section 1702; title 49 section 10706; title 50 App. section 2158.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 21a, 26 of this title; title 28 section 1407; title 30 section 184.

## § 13a. Discrimination in rebates, discounts, or advertising service charges; underselling in particular localities; penalties

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates to his knowledge against competitors of the purchaser, in that, any discount, rebate, allowance, or advertising service charge is granted to the purchaser over and above any discount, rebate, allowance, or advertising service charge available at the time of such transaction to said competitors in respect of a sale of goods of like grade, quality, and quantity; to sell, or contract to sell, goods in any part of the United States at prices lower than those exacted by said person elsewhere in the United States for the purpose of destroying competition, or eliminating a competitor in such part of the United States; or, to sell, or contract to sell, goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.

Any person violating any of the provisions of this section shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned not more than one year, or both.

(June 19, 1936, ch. 592, § 3, 49 Stat. 1528.)

## CROSS REFERENCES

Exemption on non-profit institutions from provisions of this section, see section 13c of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 7430; title 28 section 1407; title 30 section 184; title 42 sections 6202, 8235f; title 49 section 10706.

## § 13b. Cooperative association; return of net earnings or surplus

Nothing in this Act shall prevent a cooperative association from returning to its members,

producers, or consumers the whole, or any part of, the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association.

(June 19, 1936, ch. 592, § 4, 49 Stat. 1528.)

## REFERENCES IN TEXT

This Act, referred to in text, is act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

## CROSS REFERENCES

Exemptions on non-profit institutions from provisions of this section, see section 13c of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 7430; title 28 section 1407; title 42 sections 6202, 8235f; title 49 section 10706.

## § 13c. Exemption of non-profit institutions from price discrimination provisions

Nothing in the Act approved June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.

(May 26, 1938, ch. 283, 52 Stat. 446.)

## REFERENCES IN TEXT

The Act approved June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, referred to in text, is act June 19, 1936, ch. 592, 49 Stat. 1526, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

## § 14. Sale, etc., on agreement not to use goods of competitor

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

(Oct. 15, 1914, ch. 323, § 3, 38 Stat. 731.)

## CROSS REFERENCES

Administrative authority to enforce compliance with this section, see section 21 of this title.

Monopolizing trade, see section 2 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 26 of this title.

## § 15. Suits by persons injured

## (a) Amount of recovery; prejudgment interest

Except as provided in subsection (b) of this section, any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only—

(1) whether such person or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay, or otherwise acted in bad faith;

(2) whether, in the course of the action involved, such person or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(3) whether such person or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

## (b) Amount of damages payable to foreign states and instrumentalities of foreign states

(1) Except as provided in paragraph (2), any person who is a foreign state may not recover under subsection (a) of this section an amount in excess of the actual damages sustained by it and the cost of suit, including a reasonable attorney's fee.

(2) Paragraph (1) shall not apply to a foreign state if—

(A) such foreign state would be denied, under section 1605(a)(2) of title 28, immunity in a case in which the action is based upon a commercial activity, or an act, that is the subject matter of its claim under this section;

(B) such foreign state waives all defenses based upon or arising out of its status as a foreign state, to any claims brought against it in the same action;

(C) such foreign state engages primarily in commercial activities; and

(D) such foreign state does not function, with respect to the commercial activity, or the act, that is the subject matter of its claim under this section as a procurement entity for itself or for another foreign state.

## (c) Definitions

For purposes of this section—

(1) the term "commercial activity" shall have the meaning given it in section 1603(d) of title 28, and

(2) the term "foreign state" shall have the meaning given it in section 1603(a) of title 28.

(Oct. 15, 1914, ch. 323, § 4, 38 Stat. 731; Sept. 12, 1980, Pub. L. 96-349, § 4(a)(1), 94 Stat. 1156; Dec. 29, 1982, Pub. L. 97-393, 96 Stat. 1964.)

## REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (a), are defined in section 12 of this title.

## CODIFICATION

Section supersedes two former similar sections enacted by act July 2, 1890, ch. 647, § 7, 26 Stat. 210, and act Aug. 27, 1894, ch. 349, § 77, 28 Stat. 570, each of which were restricted in operation to the particular act cited.

## AMENDMENTS

1982—Pub. L. 97-393 designated existing provisions as subsec. (a), inserted "Except as provided in subsection (b) of this section," and added subsecs. (b) and (c).

1980—Pub. L. 96-349 inserted provisions respecting award of prejudgment interest including considerations for the court in determining whether an award is just under the circumstances.

## EFFECTIVE DATE OF 1980 AMENDMENT

Section 4(b) of Pub. L. 96-349 provided that: "The amendments made by this section [amending sections 15, 15a, and 15c of this title] shall apply only with respect to actions commenced after the date of the enactment of this Act [Sept 12, 1980]."

## REPEALS

Section 7 of act July 2, 1890, ch. 647, 26 Stat. 210, which was superseded by this section, was repealed by act July 7, 1955, ch. 283, § 3, 69 Stat. 283. For effective date of repeal, see note set out under section 15b of this title.

## FEDERAL RULES OF CIVIL PROCEDURE

Costs, see rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

Effect of rule 54 on this section, see note by Advisory Committee under rule 54.

## CROSS REFERENCES

Jurisdiction of civil action or proceeding arising under commerce and anti-trust regulations, see section 1337 of Title 28, Judiciary and Judicial Procedure.

Limitation of action, suspension of, see note under section 16 of this title.

Venue and service of process in action against corporation, see section 22 of this title.

Venue of district courts, see section 1391 et seq. of Title 28, Judiciary and Judicial Procedure.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15b, 15c, 16, 35, 36, 4016, 4303, 4304 of this title; title 26 sections 162, 186; title 46 App. section 1706.

### § 15a. Suits by United States; amount of recovery; prejudgment interest

Whenever the United States is hereafter injured in its business or property by reason of anything forbidden in the antitrust laws it may sue therefor in the United States district court for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover actual damages by it sustained and the cost of suit. The court may award under this section, pursuant to a motion by the United States promptly made, simple interest on actual damages for the period beginning on the date of service of the pleading of the United States setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only—

(1) whether the United States or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;

(2) whether, in the course of the action involved, the United States or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings;

(3) whether the United States or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof; and

(4) whether the award of such interest is necessary to compensate the United States adequately for the injury sustained by the United States.

(Oct. 15, 1914, ch. 323, § 4A, as added July 7, 1955, ch. 283, § 1, 69 Stat. 282, and amended Sept. 12, 1980, Pub. L. 96-349, § 4(a)(2), 94 Stat. 1156.)

#### REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

#### AMENDMENTS

1980—Pub. L. 96-349 inserted provisions respecting award of prejudgment interest including considerations for the court in determining whether an award is just under the circumstances.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-349 applicable only with respect to actions commenced after Sept. 12, 1980, see section 4(b) of Pub. L. 96-349, set out as a note under section 15 of this title.

#### EFFECTIVE DATE

Section effective six months after July 7, 1955, see note set out under section 15b of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15b, 16, 35, 36 of this title; title 28 section 1407.

### § 15b. Limitation of actions

Any action to enforce any cause of action under sections 15, 15a, or 15c of this title shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.

(Oct. 15, 1914, ch. 323, § 4B, as added July 7, 1955, ch. 283, § 1, 69 Stat. 283, and amended Sept. 30, 1976, Pub. L. 94-435, title III, § 302(1), 90 Stat. 1396.)

#### REFERENCES IN TEXT

The effective date of this Act, referred to in text, probably refers to the effective date of act July 7, 1955, ch. 283, 69 Stat. 282, which was six months after July 7, 1955.

This Act, referred to in text, probably refers to act July 7, 1955.

#### AMENDMENTS

1976—Pub. L. 94-435 substituted "sections 15, 15a, or 15c" for "sections 15 or 15a".

#### EFFECTIVE DATE

Section 4 of act July 7, 1955, provided: "This Act [enacting sections 15a and 15b of this title and amending section 16 of this title] shall take effect six months after its enactment [July 7, 1955]."

### § 15c. Actions by State attorneys general

(a) *Parens patriae*; monetary relief; damages; prejudgment interest

(1) Any attorney general of a State may bring a civil action in the name of such State, as *parens patriae* on behalf of natural persons residing in such State, in any district court of the United States having jurisdiction of the defendant, to secure monetary relief as provided in this section for injury sustained by such natural persons to their property by reason of any violation of sections 1 to 7 of this title. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief (A) which duplicates amounts which have been awarded for the same injury, or (B) which is properly allocable to (i) natural persons who have excluded their claims pursuant to subsection (b)(2) of this section, and (ii) any business entity.

(2) The court shall award the State as monetary relief threefold the total damage sustained as described in paragraph (1) of this subsection, and the cost of suit, including a reasonable attorney's fee. The court may award under this paragraph, pursuant to a motion by such State promptly made, simple interest on the total damage for the period beginning on the date of service of such State's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this paragraph for any period is just in the circumstances, the court shall consider only—

(A) whether such State or the opposing party, or either party's representative, made

motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;

(B) whether, in the course of the action involved, such State or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(C) whether such State or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

**(b) Notice; exclusion election; final judgment**

(1) In any action brought under subsection (a)(1) of this section, the State attorney general shall, at such times, in such manner, and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case.

(2) Any person on whose behalf an action is brought under subsection (a)(1) of this section may elect to exclude from adjudication the portion of the State claim for monetary relief attributable to him by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (1) of this subsection.

(3) The final judgment in an action under subsection (a)(1) of this section shall be res judicata as to any claim under section 15 of this title by any person on behalf of whom such action was brought and who fails to give such notice within the period specified in the notice given pursuant to paragraph (1) of this subsection.

**(c) Dismissal or compromise of action**

An action under subsection (a)(1) of this section shall not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given in such manner as the court directs.

**(d) Attorneys' fees**

In any action under subsection (a) of this section—

(1) the amount of the plaintiffs' attorney's fee, if any, shall be determined by the court; and

(2) the court may, in its discretion, award a reasonable attorney's fee to a prevailing defendant upon a finding that the State attorney general has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

(Oct. 15, 1914, ch. 323, § 4C, as added Sept. 30, 1976, Pub. L. 94-435, title III, § 301, 90 Stat. 1394, and amended Sept. 12, 1980, Pub. L. 96-349, § 4(a)(3), 94 Stat. 1157.)

**REFERENCES IN TEXT**

The antitrust laws, referred to in subsec. (a)(2), are defined in section 12 of this title.

**AMENDMENTS**

1980—Subsec. (a)(2). Pub. L. 96-349 inserted provisions respecting award of prejudgment interest including considerations for the court in determining whether an award is just under the circumstances.

**EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96-349 applicable only with respect to actions commenced after Sept. 12, 1980, see section 4(b) of Pub. L. 96-349, set out as a note under section 15 of this title.

**EFFECTIVE DATE**

Section 304 of Pub. L. 94-435 provided that: "The amendments to the Clayton Act [sections 12, 13, 14 to 19, 20, 21, 22 to 27 of this title and sections 52 and 53 of Title 29, Labor] made by section 301 of this Act [enacting sections 15c to 15h of this title] shall not apply to any injury sustained prior to the date of enactment of this Act [Sept. 30, 1976]."

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 15b, 15d, 15e, 15g, 15h, 16, 35, 36, 4303 of this title; title 28 section 1407; title 42 section 11111.

**§ 15d. Measurement of damages**

In any action under section 15c(a)(1) of this title, in which there has been a determination that a defendant agreed to fix prices in violation of sections 1 to 7 of this title, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

(Oct. 15, 1914, ch. 323, § 4D, as added Sept. 30, 1976, Pub. L. 94-435, title III, § 301, 90 Stat. 1395.)

**EFFECTIVE DATE**

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 15g, 15h of this title.

**§ 15e. Distribution of damages**

Monetary relief recovered in an action under section 15c(a)(1) of this title shall—

(1) be distributed in such manner as the district court in its discretion may authorize; or

(2) be deemed a civil penalty by the court and deposited with the State as general revenues;

subject in either case to the requirement that any distribution procedure adopted afford each person a reasonable opportunity to secure his appropriate portion of the net monetary relief.

(Oct. 15, 1914, ch. 323, § 4E, as added Sept. 30, 1976, Pub. L. 94-435, title III, § 301, 90 Stat. 1395.)

**EFFECTIVE DATE**

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 15g, 15h of this title.

**§ 15f. Actions by Attorney General****(a) Notification to State attorney general**

Whenever the Attorney General of the United States has brought an action under the antitrust laws, and he has reason to believe that any State attorney general would be entitled to bring an action under this Act based substantially on the same alleged violation of the antitrust laws, he shall promptly give written notification thereof to such State attorney general.

**(b) Availability of files and other materials**

To assist a State attorney general in evaluating the notice or in bringing any action under this Act, the Attorney General of the United States shall, upon request by such State attorney general, make available to him, to the extent permitted by law, any investigative files or other materials which are or may be relevant or material to the actual or potential cause of action under this Act.

(Oct. 15, 1914, ch. 323, § 4F, as added Sept. 30, 1976, Pub. L. 94-435, title III, § 301, 90 Stat. 1395.)

**REFERENCES IN TEXT**

The antitrust laws, referred to in subsec. (a), are defined in section 12 of this title.

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

**EFFECTIVE DATE**

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 15g, 15h of this title.

**§ 15g. Definitions**

For the purposes of sections 15c, 15d, 15e, and 15f of this title:

(1) The term "State attorney general" means the chief legal officer of a State, or any other person authorized by State law to bring actions under section 15c of this title, and includes the Corporation Counsel of the District of Columbia, except that such term does not include any person employed or retained on—

(A) a contingency fee based on a percentage of the monetary relief awarded under this section; or

(B) any other contingency fee basis, unless the amount of the award of a reason-

able attorney's fee to a prevailing plaintiff is determined by the court under section 15c(d)(1) of this title.

(2) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(3) The term "natural persons" does not include proprietorships or partnerships.

(Oct. 15, 1914, ch. 323, § 4G, as added Sept. 30, 1976, Pub. L. 94-435, title III, § 301, 90 Stat. 1396.)

**EFFECTIVE DATE**

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 15h, 34, 4301 of this title.

**§ 15h. Applicability of parens patriae actions**

Sections 15c, 15d, 15e, 15f, and 15g of this title shall apply in any State, unless such State provides by law for its nonapplicability in such State.

(Oct. 15, 1914, ch. 323, § 4H, as added Sept. 30, 1976, Pub. L. 94-435, title III, § 301, 90 Stat. 1396.)

**EFFECTIVE DATE**

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

**§ 16. Judgments****(a) Prima facie evidence; collateral estoppel**

A final judgment or decree heretofore or hereafter rendered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, That this section shall not apply to consent judgments or decrees entered before any testimony has been taken. Nothing contained in this section shall be construed to impose any limitation on the application of collateral estoppel, except that, in any action or proceeding brought under the antitrust laws, collateral estoppel effect shall not be given to any finding made by the Federal Trade Commission under the antitrust laws or under section 45 of this title which could give rise to a claim for relief under the antitrust laws.

(h) Consent judgments and competitive impact statements; publication in Federal Register; availability of copies to the public

Any proposal for a consent judgment submitted by the United States for entry in any civil proceeding brought by or on behalf of the United States under the antitrust laws shall be

filed with the district court before which such proceeding is pending and published by the United States in the Federal Register at least 60 days prior to the effective date of such judgment. Any written comments relating to such proposal and any responses by the United States thereto, shall also be filed with such district court and published by the United States in the Federal Register within such sixty-day period. Copies of such proposal and any other materials and documents which the United States considered determinative in formulating such proposal, shall also be made available to the public at the district court and in such other districts as the court may subsequently direct. Simultaneously with the filing of such proposal, unless otherwise instructed by the court, the United States shall file with the district court, publish in the Federal Register, and thereafter furnish to any person upon request, a competitive impact statement which shall recite—

- (1) the nature and purpose of the proceeding;
- (2) a description of the practices or events giving rise to the alleged violation of the anti-trust laws;
- (3) an explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;
- (4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment is entered in such proceeding;
- (5) a description of the procedures available for modification of such proposal; and
- (6) a description and evaluation of alternatives to such proposal actually considered by the United States.

**(c) Publication of summaries in newspapers**

The United States shall also cause to be published, commencing at least 60 days prior to the effective date of the judgment described in subsection (b) of this section, for 7 days over a period of 2 weeks in newspapers of general circulation of the district in which the case has been filed, in the District of Columbia, and in such other districts as the court may direct—

- (i) a summary of the terms of the proposal for consent judgment,
  - (ii) a summary of the competitive impact statement filed under subsection (b) of this section,
  - (iii) and a list of the materials and documents under subsection (b) of this section which the United States shall make available for purposes of meaningful public comment, and the place where such materials and documents are available for public inspection.
- (d) Consideration of public comments by Attorney General and publication of response**

During the 60-day period as specified in subsection (b) of this section, and such additional time as the United States may request and the court may grant, the United States shall receive and consider any written comments relating to

the proposal for the consent judgment submitted under subsection (b) of this section. The Attorney General or his designee shall establish procedures to carry out the provisions of this subsection, but such 60-day time period shall not be shortened except by order of the district court upon a showing that (1) extraordinary circumstances require such shortening and (2) such shortening is not adverse to the public interest. At the close of the period during which such comments may be received, the United States shall file with the district court and cause to be published in the Federal Register a response to such comments.

**(e) Public interest determination**

Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court may consider—

- (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
- (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

**(f) Procedure for public interest determination**

In making its determination under subsection (e) of this section, the court may—

- (1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;
- (2) appoint a special master and such outside consultants or expert witnesses as the court may deem appropriate; and request and obtain the views, evaluations, or advice of any individual, group or agency of government with respect to any aspects of the proposed judgment or the effect of such judgment, in such manner as the court deems appropriate;
- (3) authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae, intervention as a party pursuant to the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;
- (4) review any comments including any objections filed with the United States under subsection (d) of this section concerning the proposed judgment and the responses of the United States to such comments and objections; and
- (5) take such other action in the public interest as the court may deem appropriate.



(g) Filing of written or oral communications with the district court

Not later than 10 days following the date of the filing of any proposal for a consent judgment under subsection (b) of this section, each defendant shall file with the district court a description of any and all written or oral communications by or on behalf of such defendant, including any and all written or oral communications on behalf of such defendant, or other person, with any officer or employee of the United States concerning or relevant to such proposal, except that any such communications made by counsel of record alone with the Attorney General or the employees of the Department of Justice alone shall be excluded from the requirements of this subsection. Prior to the entry of any consent judgment pursuant to the antitrust laws, each defendant shall certify to the district court that the requirements of this subsection have been complied with and that such filing is a true and complete description of such communications known to the defendant or which the defendant reasonably should have known.

(h) Inadmissibility as evidence of proceedings before the district court and the competitive impact statement

Proceedings before the district court under subsections (e) and (f) of this section, and the competitive impact statement filed under subsection (b) of this section, shall not be admissible against any defendant in any action or proceeding brought by any other party against such defendant under the antitrust laws or by the United States under section 15a of this title nor constitute a basis for the introduction of the consent judgment as prima facie evidence against such defendant in any such action or proceeding.

(i) Suspension of limitations

Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws, but not including an action under section 15a of this title, the running of the statute of limitations in respect to every private or State right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: *Provided, however,* That whenever the running of the statute of limitations in respect of a cause of action arising under section 15 or 15c of this title is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued.

(Oct. 15, 1914, ch. 323, § 5, 38 Stat. 731; July 7, 1955, ch. 283, § 2, 69 Stat. 283; Dec. 21, 1974, Pub. L. 93-528, § 2, 88 Stat. 1706; Sept. 30, 1976, Pub. L. 94-435, title III, § 302(2), 90 Stat. 1396; Sept. 12, 1980, Pub. L. 96-349, § 5(a), 94 Stat. 1157.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsecs. (a), (b), and (g) to (i), are defined in section 12 of this title.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-349 made collateral estoppel inapplicable in any action or proceeding brought under the antitrust laws to any finding made by the Commission under the antitrust laws or under section 45 of this title which could give rise to a claim for relief under the antitrust laws; struck out “or by the United States under section 15a of this title,” after “under said laws”; and deleted from proviso “or to judgments or decrees entered in actions under section 15a of this title” after “testimony has been taken”.

1976—Pub. L. 94-435 substituted “private or State right of action” for “private right of action” and “section 15 or 15c” for “section 15”.

1974—Subsecs. (b) to (i). Pub. L. 93-528 added subsecs. (b) to (h) and redesignated former subsec. (b) as (i).

1955—Act July 7, 1955, substituted subsec. (a) for first paragraph, to provide that final judgments in actions under the antitrust laws by the United States shall be prima facie evidence in damage suits by the United States as well as in private damage suits, and substituted subsec. (b) for second paragraph, to provide for a one-year suspension of limitations.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 5(b) of Pub. L. 96-349 provided that: “The amendments made by this section [amending this section] shall apply only with respect to actions commenced after the date of the enactment of this Act [Sept. 12, 1980].”

SUSPENSION OF LIMITATION

Act Oct. 10, 1942, ch. 589, 56 Stat. 781, as amended June 30, 1945, ch. 213, 59 Stat. 306, provided for the suspension of any existing statutes of limitations relating to violations of antitrust laws now indictable or subject to civil proceedings under any existing statutes, until June 30, 1946.

FEDERAL RULES OF APPELLATE PROCEDURE

Stay or injunction pending appeal, see rule 8, Title 28, Appendix, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Judgment, see rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

One form of action, see rule 2.

Rules of governing the procedure in all suits of a civil nature cognizable as cases at law or in equity, see rule 1.

FEDERAL RULES OF CRIMINAL PROCEDURE

Sentence and judgment, see rule 32, Title 18, Appendix, Crimes and Criminal Procedure.

Verdict, see rule 31.

§ 17. Antitrust laws not applicable to labor organizations

The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

(Oct. 15, 1914, ch. 323, § 6, 38 Stat. 731.)



## REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

## CROSS REFERENCES

Jurisdiction to restrain violations of restrictions on payments to employee representatives without regard to section, see section 186 of Title 29, Labor.

Restriction of injunctive relief in labor actions, see sections 52 and 107 of Title 29.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 1951; title 29 section 186; title 47 section 606.

### § 18. Acquisition by one corporation of stock of another

No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

This section shall not apply to persons purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce or in any activity affecting commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent

company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Secretary of Transportation, Federal Communications Commission, Federal Power Commission, Interstate Commerce Commission, the Securities and Exchange Commission in the exercise of its jurisdiction under section 79j of this title, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission or Secretary.

(Oct. 15, 1914, ch. 323, § 7, 38 Stat. 731; Dec. 29, 1950, ch. 1184, 64 Stat. 1125; Sept. 12, 1980, Pub. L. 96-349, § 6(a), 94 Stat. 1157; Oct. 4, 1984, Pub. L. 98-443, § 9(d), 98 Stat. 1708.)

## AMENDMENTS

1984—Pub. L. 98-443 substituted "Secretary of Transportation" for "Civil Aeronautics Board" and "Commission or Secretary" for "Commission, Secretary, or Board" in sixth par.

1980—Pub. L. 96-349, substituted "person" for "corporation" wherever appearing in first and second pars.; substituted "persons" for "corporations" in second par. and first sentence of third par.; and inserted "or in any activity affecting commerce" after "commerce" wherever appearing in first, second, and third pars.

1950—Act Dec. 29, 1950, amended section generally so as to prohibit the acquisition of the whole or any part of the assets of another corporation when the effect of the acquisition may substantially lessen competition or tend to create a monopoly.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

## EFFECTIVE DATE OF 1980 AMENDMENT

Section 6(b) of Pub. L. 96-349 provided that: "The amendments made by this section [amending this section] shall apply only with respect to acquisitions made after the date of the enactment of this Act [Sept. 12, 1980]."

## TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal

Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

All executive and administrative functions of the Maritime Commission were transferred to the Chairman of the Maritime Commission by Reorg. Plan No. 6 of 1949, eff. Aug. 19, 1949, 14 F.R. 5228, 63 Stat. 1069, set out in the Appendix to Title 5, Government Organization and Employees. See, also, notes set out under section 1111 of Title 46, Appendix, Shipping.

The United States Maritime Commission was abolished by Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out in the Appendix to Title 5, which transferred part of its functions and part of the functions of its Chairman, to the Federal Maritime Board and the Chairman thereof, such Board having been created by that Plan as an agency within the Department of Commerce with an independent status in some respects, and transferred the remainder of such Commission's functions and the functions of its Chairman to the Secretary of Commerce, with power vested in the Secretary to authorize their performance by the Maritime Administrator, the head of the Maritime Administration, which likewise was established by the Plan in the Department of Commerce with the provision that the Chairman of the Federal Maritime Board should, ex officio, be such Administrator.

Section 304 of Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, abolished the Federal Maritime Board, including the offices of the members of the Board. Functions of the Board were transferred either to the Federal Maritime Commission or to the Secretary of Commerce by sections 103 and 202 of Reorg. Plan No. 7 of 1961.

The Maritime Administration of the Department of Commerce was transferred to the Department of Transportation, and all related functions of the Secretary and other officers and offices of the Department of Commerce were transferred to the Department of Transportation and vested in the Secretary of Transportation, see section 1601 et seq. of Title 46, Appendix, Shipping.

#### CROSS REFERENCES

Acquisition of stock of export trade corporation, see section 63 of this title.

Administrative authority to enforce compliance with this section, see section 21 of this title.

Divestment of stock held contrary to the provisions of this section, see section 21 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 18a, 21, 26, 63 of this title.

### § 18a. Premerger notification and waiting period

#### (a) Filing

Except as exempted pursuant to subsection (c) of this section, no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) of this section and the waiting period described in subsection (b)(1) of this section has expired, if—

(1) the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce;

(2)(A) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of \$10,000,000 or more are being acquired by any person

which has total assets or annual net sales of \$100,000,000 or more;

(B) any voting securities or assets of a person not engaged in manufacturing which has total assets of \$10,000,000 or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 or more; or

(C) any voting securities or assets of a person with annual net sales or total assets of \$100,000,000 or more are being acquired by any person with total assets or annual net sales of \$10,000,000 or more; and

(3) as a result of such acquisition, the acquiring person would hold—

(A) 15 per centum or more of the voting securities or assets of the acquired person, or

(B) an aggregate total amount of the voting securities and assets of the acquired person in excess of \$15,000,000.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d) of this section.

#### (b) Waiting period; publication; voting securities

(1) The waiting period required under subsection (a) of this section shall—

(A) begin on the date of the receipt by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereinafter referred to in this section as the "Assistant Attorney General") of—

(i) the completed notification required under subsection (a) of this section, or

(ii) if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance,

from both persons, or, in the case of a tender offer, the acquiring person; and

(B) end on the thirtieth day after the date of such receipt (or in the case of a cash tender offer, the fifteenth day), or on such later date as may be set under subsection (e)(2) or (g)(2) of this section.

(2) The Federal Trade Commission and the Assistant Attorney General may, in individual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the Federal Register a notice that neither intends to take any action within such period with respect to such acquisition.

(3) As used in this section—

(A) The term "voting securities" means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions.

(B) The amount or percentage of voting securities or assets of a person which are acquired or held by another person shall be determined by aggregating the amount or per-

centage of such voting securities or assets held or acquired by such other person and each affiliate thereof.

**(c) Exempt transactions**

The following classes of transactions are exempt from the requirements of this section—

(1) acquisitions of goods or realty transferred in the ordinary course of business;

(2) acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;

(3) acquisitions of voting securities of an issuer at least 50 per centum of the voting securities of which are owned by the acquiring person prior to such acquisition;

(4) transfers to or from a Federal agency or a State or political subdivision thereof;

(5) transactions specifically exempted from the antitrust laws by Federal statute;

(6) transactions specifically exempted from the antitrust laws by Federal statute if approved by a Federal agency, if copies of all information and documentary material filed with such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;

(7) transactions which require agency approval under section 1828(c) of title 12, or section 1842 of title 12;

(8) transactions which require agency approval under section 1843 of title 12, section 1726 or 1730a(e) of title 12, or section 1464 of title 12, if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction;

(9) acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;

(10) acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer;

(11) acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company, or insurance company, of (A) voting securities pursuant to a plan of reorganization or dissolution; or (B) assets in the ordinary course of its business; and

(12) such other acquisitions, transfers, or transactions, as may be exempted under subsection (d)(2)(B) of this section.

**(d) Commission rules**

The Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5, consistent with the purposes of this section—

(1) shall require that the notification required under subsection (a) of this section be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commis-

sion and the Assistant Attorney General to determine whether such acquisition may, if consummated, violate the antitrust laws; and

(2) may—

(A) define the terms used in this section;

(B) exempt, from the requirements of this section, classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws; and

(C) prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.

**(e) Additional information; waiting period extensions**

(1) The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section, require the submission of additional information or documentary material relevant to the proposed acquisition, from a person required to file notification with respect to such acquisition under subsection (a) of this section prior to the expiration of the waiting period specified in subsection (b)(1) of this section, or from any officer, director, partner, agent, or employee of such person.

(2) The Federal Trade Commission or the Assistant Attorney General, in its or his discretion, may extend the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section for an additional period of not more than 20 days (or in the case of a cash tender offer, 10 days) after the date on which the Federal Trade Commission or the Assistant Attorney General, as the case may be, receives from any person to whom a request is made under paragraph (1), or in the case of tender offers, the acquiring person, (A) all the information and documentary material required to be submitted pursuant to such a request, or (B) if such request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance. Such additional period may be further extended only by the United States district court, upon an application by the Federal Trade Commission or the Assistant Attorney General pursuant to subsection (g)(2) of this section.

**(f) Preliminary injunctions; hearings**

If a proceeding is instituted or an action is filed by the Federal Trade Commission, alleging that a proposed acquisition violates section 18 of this title, or section 45 of this title, or an action is filed by the United States, alleging that a proposed acquisition violates such section 18 of this title, or section 1 or 2 of this title, and the Federal Trade Commission or the Assistant Attorney General (1) files a motion for a preliminary injunction against consummation of such acquisition pendente lite, and (2) certifies the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection, then upon the filing of

such motion and certification, the chief judge of such district court shall immediately notify the chief judge of the United States court of appeals for the circuit in which such district court is located, who shall designate a United States district judge to whom such action shall be assigned for all purposes.

**(g) Civil penalty; compliance; power of court**

(1) Any person, or any officer, director, or partner thereof, who fails to comply with any provision of this section shall be liable to the United States for a civil penalty of not more than \$10,000 for each day during which such person is in violation of this section. Such penalty may be recovered in a civil action brought by the United States.

(2) If any person, or any officer, director, partner, agent, or employee thereof, fails substantially to comply with the notification requirement under subsection (a) of this section or any request for the submission of additional information or documentary material under subsection (e)(1) of this section within the waiting period specified in subsection (b)(1) of this section and as may be extended under subsection (e)(2) of this section, the United States district court—

(A) may order compliance;

(B) shall extend the waiting period specified in subsection (b)(1) of this section and as may have been extended under subsection (e)(2) of this section until there has been substantial compliance, except that, in the case of a tender offer, the court may not extend such waiting period on the basis of a failure, by the person whose stock is sought to be acquired, to comply substantially with such notification requirement or any such request; and

(C) may grant such other equitable relief as the court in its discretion determines necessary or appropriate,

upon application of the Federal Trade Commission or the Assistant Attorney General.

**(h) Disclosure exemption**

Any information or documentary material filed with the Assistant Attorney General or the Federal Trade Commission pursuant to this section shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

**(i) Construction with other laws**

(1) Any action taken by the Federal Trade Commission or the Assistant Attorney General or any failure of the Federal Trade Commission or the Assistant Attorney General to take any action under this section shall not bar any proceeding or any action with respect to such acquisition at any time under any other section of this Act or any other provision of law.

(2) Nothing contained in this section shall limit the authority of the Assistant Attorney General or the Federal Trade Commission to

secure at any time from any person documentary material, oral testimony, or other information under the Antitrust Civil Process Act [15 U.S.C. 1311 et seq.], the Federal Trade Commission Act [15 U.S.C. 41 et seq.], or any other provision of law.

**(j) Report to Congress; legislative recommendations**

Beginning not later than January 1, 1978, the Federal Trade Commission, with the concurrence of the Assistant Attorney General, shall annually report to the Congress on the operation of this section. Such report shall include an assessment of the effects of this section, of the effects, purpose, and need for any rules promulgated pursuant thereto, and any recommendations for revisions of this section.

(Oct. 15, 1914, ch. 323, § 7A, as added Sept. 30, 1976, Pub. L. 94-435, title II, § 201, 90 Stat. 1390, and amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(10)(A), 98 Stat. 3358.)

**REFERENCES IN TEXT**

The antitrust laws, referred to in subsecs. (c), (d), are defined in section 12 of this title.

This Act, referred to in subsec. (i)(1), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (i)(2), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter 1 (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

The Antitrust Civil Process Act, referred to in subsec. (i)(2), is Pub. L. 87-664, Sept. 19, 1962, 76 Stat. 548, as amended, which is classified generally to chapter 34 (§ 1311 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1311 of this title and Tables.

**AMENDMENTS**

1984—Subsec. (f)(2). Pub. L. 98-620 struck out designation “(A)” before “upon the filing”, and struck out subpar. (B) which had provided that if the Federal Trade Commission or the Assistant Attorney General certified that he or it believed that the public interest required relief pendente lite pursuant to this subsection, the motion for a preliminary injunction had to be set down for hearing by the district judge so designated at the earliest practicable time, would take precedence over all matters except older matters of the same character and trials pursuant to section 3161 of title 18, and had to be in every way expedited.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

**EFFECTIVE DATE**

Section 202 of Pub. L. 94-435 provided that: “The amendment made by section 201 of this Act [enacting this section] shall take effect 150 days after the date of enactment of this Act [Sept. 30, 1976], except that subsection (d) of section 7A of the Clayton Act [subsec. (d) of this section] (as added by section 201 of this Act) shall take effect on the date of enactment of this Act [Sept. 30, 1976].”

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 11 section 363.

## § 19. Interlocking directorates and officers

No private banker or director, officer, or employee of any member bank of the Federal Reserve System or any branch thereof shall be at the same time a director, officer, or employee of any other bank, banking association, savings bank, or trust company organized under the National Bank Act [12 U.S.C. 21 et seq.] or organized under the laws of any State or of the District of Columbia, or any branch thereof, except that the Board of Governors of the Federal Reserve System may by regulation permit such service as a director, officer, or employee of not more than one other such institution or branch thereof; but the foregoing prohibition shall not apply in the case of any one or more of the following or any branch thereof:

(1) A bank, banking association, savings bank, or trust company, more than 90 per centum of the stock of which is owned directly or indirectly by the United States or by any corporation of which the United States directly or indirectly owns more than 90 per centum of the stock.

(2) A bank, banking association, savings bank, or trust company which has been placed formally in liquidation or which is in the hands of a receiver, conservator, or other official exercising similar functions.

(3) A corporation, principally engaged in international or foreign banking or banking in a dependency or insular possession of the United States which has entered into an agreement with the Board of Governors of the Federal Reserve System pursuant to section 25 of the Federal Reserve Act, as amended [12 U.S.C. 601 et seq.].

(4) A bank, banking association, savings bank, or trust company, more than 50 per centum of the common stock of which is owned directly or indirectly by persons who own directly or indirectly more than 50 per centum of the common stock of such member bank.

(5) A bank, banking association, savings bank, or trust company not located and having no branch in the same city, town, or village as that in which such member bank or any branch thereof is located, or in any city, town, or village contiguous or adjacent thereto.

(6) A bank, banking association, savings bank, or trust company not engaged in a class or classes of business in which such member bank is engaged.

(7) A mutual savings bank having no capital stock.

Until February 1, 1939, nothing in this section shall prohibit any director, officer, or employee of any member bank of the Federal Reserve System, or any branch thereof, who is lawfully serving at the same time as a private banker or as a director, officer, or employee of any other bank, banking association, savings bank, or trust company, or any branch thereof, on August 23, 1935, from continuing such service.

The Board of Governors of the Federal Reserve System is authorized and directed to enforce compliance with this section, and to prescribe such rules and regulations as it deems necessary for that purpose.

No person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies, and common carriers subject to subtitle IV of title 49, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of this election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

(Oct. 15, 1914, ch. 323, § 8, 38 Stat. 732; May 15, 1916, ch. 120, 39 Stat. 121; May 26, 1920, ch. 206, 41 Stat. 626; Mar. 9, 1928, ch. 165, 45 Stat. 253; Mar. 2, 1929, ch. 581, 45 Stat. 1536; Aug. 23, 1935, ch. 614, § 329, 49 Stat. 717.)

## REFERENCES IN TEXT

The National Bank Act, referred to in text, is act June 3, 1864, ch. 106, 13 Stat. 99, as amended, which is classified generally to chapter 2 (§ 21 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see References in Text note set out under section 38 of Title 12.

Section 25 of the Federal Reserve Act, as amended, referred to in subpar. (3), is classified to subchapter I [§ 601 et seq.] of chapter 6 of Title 12.

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

## CODIFICATION

"Subtitle IV of title 49," was substituted in text for "the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven," on authority of Pub. L. 95-473, § 3(b), Oct. 17, 1978, 92 Stat.

1466, the first section of which enacted subtitle IV of Title 49, Transportation.

#### AMENDMENTS

1935—Act Aug. 23, 1935, amended section generally.  
1929—Act Mar. 2, 1929, amended second par.  
1928—Act Mar. 9, 1928, amended second par.

#### CROSS REFERENCES

Administrative authority to enforce compliance with this section, see section 21 of this title.

Atomic energy licenses, antitrust provisions governing, see section 2135 of Title 42, The Public Health and Welfare.

Injunctive relief for private parties, see section 26 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 26 of this title; title 12 section 3205.

**§ 19a. Repealed.** Aug. 23, 1935, ch. 614, § 329, 49 Stat. 717

Section, act Oct. 15, 1914, ch. 323, § 8a, as added June 16, 1933, ch. 89, § 33, 48 Stat. 194, related to interlocking corporations or partnerships making loans on securities.

**§ 20. Purchases by common carriers in case of interlocking directorates, etc.**

No common carrier engaged in commerce shall have any dealings in securities, supplies, or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than \$50,000, in the aggregate, in any one year, with another corporation, firm, partnership, or association when the said common carrier shall have upon its board of directors or as its president, manager, or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership, or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors, and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding, or shall do any act to prevent free and fair competition among the bidders or those desiring to bid, shall be punished as prescribed in this section in the case of an officer or director.

Every such common carrier having any such transactions or making any such purchases shall, within thirty days after making the same, file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the cor-

porations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions, it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

If any common carrier shall violate this section, it shall be fined not exceeding \$25,000; and every such director, agent, manager, or officer thereof who shall have knowingly voted for or directed the act constituting such violation, or who shall have aided or abetted in such violation, shall be deemed guilty of a misdemeanor and shall be fined not exceeding \$5,000 or confined in jail not exceeding one year, or both, in the discretion of the court.

(Oct. 15, 1914, ch. 323, § 10, 38 Stat. 734.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 45 section 581.

#### § 21. Enforcement provisions

(a) Commission, Board, or Secretary authorized to enforce compliance

Authority to enforce compliance with sections 13, 14, 18, and 19 of this title by the persons respectively subject thereto is vested in the Interstate Commerce Commission where applicable to common carriers subject to subtitle IV of title 49; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; in the Secretary of Transportation where applicable to air carriers and foreign air carriers subject to the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]; in the Board of Governors of the Federal Reserve System where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce to be exercised as follows:

(b) Issuance of complaints for violations; hearing; intervention; filing of testimony; report; cease and desist orders; reopening and alteration of reports or orders

Whenever the Commission, Board, or Secretary vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections 13, 14, 18, and 19 of this title, it shall issue and serve upon such person and the Attorney General a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission, Board, or Secretary requiring such person to cease and desist from the violation of the law so charged in said complaint. The Attorney General shall have the right to intervene and appear in said proceeding and any person may make application, and upon good cause shown may be allowed by the

Commission, Board, or Secretary, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission, Board, or Secretary. If upon such hearing the Commission, Board, or Secretary, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock, or other share capital, or assets, held or rid itself of the directors chosen contrary to the provisions of sections 18 and 19 of this title, if any there be, in the manner and within the time fixed by said order. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission, Board, or Secretary may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission, Board, or Secretary may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission, Board, or Secretary conditions of fact or of law have so changed as to require such action or if the public interest shall so require: *Provided, however,* That the said person may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section.

(c) Review of orders; jurisdiction; filing of petition and record of proceeding; conclusiveness of findings; additional evidence; modification of findings; finality of judgment and decree

Any person required by such order of the commission, board, or Secretary to cease and desist from any such violation may obtain a review of such order in the court of appeals of the United States for any circuit within which such violation occurred or within which such person resides or carries on business, by filing in the court, within sixty days after the date of the service of such order, a written petition praying that the order of the commission, board, or Secretary be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the commission, board, or Secretary, and thereupon the commission, board, or Secretary shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon such filing of the petition the court shall have jurisdiction of the proceed-

ing and of the question determined therein concurrently with the commission, board, or Secretary until the filing of the record, and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the commission, board, or Secretary, and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors *pendente lite*. The findings of the commission, board, or Secretary as to the facts, if supported by substantial evidence, shall be conclusive. To the extent that the order of the commission, board, or Secretary is affirmed, the court shall issue its own order commanding obedience to the terms of such order of the commission, board, or Secretary. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, board, or Secretary, the court may order such additional evidence to be taken before the commission, board, or Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission, board, or Secretary may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and shall file such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(d) Exclusive jurisdiction of Court of Appeals

Upon the filing of the record with its jurisdiction of the court of appeals to affirm, enforce, modify, or set aside orders of the commission, board, or Secretary shall be exclusive.

(e) Liability under antitrust laws

No order of the commission, board, or Secretary or judgment of the court to enforce the same shall in anywise relieve or absolve any person from any liability under the antitrust laws.

(f) Service of complaints, orders and other processes

Complaints, orders, and other processes of the commission, board, or Secretary under this section may be serviced by anyone duly authorized by the commission, board, or Secretary, either (1) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (2) by leaving a copy thereof at the residence or the principal office or place of business of such person; or (3) by mailing by registered or certified mail a copy thereof addressed to such person at his or its residence or principal office or place of busi-



ness. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered or certified mail as aforesaid shall be proof of the service of the same.

**(g) Finality of orders generally**

Any order issued under subsection (b) of this section shall become final—

(1) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the commission, board, or Secretary may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b) of this section; or

(2) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the commission, board, or Secretary has been affirmed, or the petition for review has been dismissed by the court of appeals, and no petition for certiorari has been duly filed; or

(3) upon the denial of a petition for certiorari, if the order of the commission, board, or Secretary has been affirmed or the petition for review has been dismissed by the court of appeals; or

(4) upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the commission, board, or Secretary be affirmed or the petition for review be dismissed.

**(h) Finality of orders modified by Supreme Court**

If the Supreme Court directs that the order of the commission, board, or Secretary be modified or set aside, the order of the commission, board, or Secretary rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the commission, board, or Secretary shall become final when so corrected.

**(i) Finality of orders modified by Court of Appeals**

If the order of the commission, board, or Secretary is modified or set aside by the court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court then the order of the commission, board, or Secretary rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the commission, board, or Secretary was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the commission, board, or Secretary shall become final when so corrected.

**(j) Finality of orders issued on rehearing ordered by Court of Appeals or Supreme Court**

If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the commission, board, or Secretary for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the commission, board, or Secretary rendered upon such rehearing shall become final in the same manner as though no prior order of the commission, board, or Secretary had been rendered.

**(k) "Mandate" defined**

As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

**(l) Penalties**

Any person who violates any order issued by the commission, board, or Secretary under subsection (b) of this section after such order has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than \$5,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States. Each separate violation of any such order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the commission, board, or Secretary each day of continuance of such failure or neglect shall be deemed a separate offense.

(Oct. 15, 1914, ch. 323, § 11, 38 Stat. 734; June 19, 1934, ch. 652, title VII, § 702(d), formerly title VI, § 602(d), 48 Stat. 1102, renumbered Oct. 30, 1984, Pub. L. 98-549, § 6(a), 98 Stat. 2804; Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704; June 23, 1938, ch. 601, § 1107(g), 52 Stat. 1028; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Dec. 29, 1950, ch. 1184, 64 Stat. 1125; Aug. 23, 1958, Pub. L. 85-726, title XIV, § 1401(b), 72 Stat. 806; Aug. 28, 1958, Pub. L. 85-791, § 4, 72 Stat. 943; July 23, 1959, Pub. L. 86-107, § 1, 73 Stat. 243; Oct. 4, 1984, Pub. L. 98-443, § 9(m), 98 Stat. 1708; Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(10)(B), 98 Stat. 3358.)

**REFERENCES IN TEXT**

The Federal Aviation Act of 1958, referred to in subsec. (a), is Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, as amended, which is classified principally to chapter 20 (§ 1301 et seq.) of Title 49, Appendix, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 49, Appendix, and Tables.

The antitrust laws, referred to in subsec. (e), are defined in section 12 of this title.

**CODIFICATION**

"Subtitle IV of title 49" was substituted in subsec. (a) for "the Interstate Commerce Act, as amended" on authority of Pub. L. 95-473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.



## AMENDMENTS

1984—Subsec. (a). Pub. L. 98-443, § 9(m)(1), substituted "Secretary of Transportation where applicable to air carriers and foreign air carriers subject to the Federal Aviation Act of 1958" for "Civil Aeronautics Board where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938".

Subsec. (b). Pub. L. 98-443, § 9(m)(2), substituted "Commission, Board, or Secretary" for "Commission or Board" wherever appearing.

Subsecs. (c), (d). Pub. L. 98-443, § 9(m)(3), substituted "commission, board, or Secretary" for "commission or board" wherever appearing.

Subsec. (e). Pub. L. 98-620 struck out provision that such proceedings in the court of appeals had to be given precedence over other cases pending therein, and had to be in every way expedited.

Pub. L. 98-443, § 9(m)(3), substituted "commission, board, or Secretary" for "commission or board".

Subsecs. (f) to (j), (l). Pub. L. 98-443, § 9(m)(3), substituted "commission, board, or Secretary" for "commission or board" wherever appearing.

1959—Pub. L. 86-107 amended section generally, and among other changes, authorized the Commission or Board, upon notice and opportunity for hearing, in cases where a petition for review has not been filed within the time allowed, to reopen and alter, modify, or set aside, in whole or in part, any report or order, whenever conditions of fact or law have so changed as to require such action or if the public interest so requires, and added subsecs. (g) to (k), providing for finality of orders, and subsec. (l), prescribing the civil penalty for violation of orders.

1958—Pub. L. 85-791, § 4(a), struck out "a transcript of" after "Until" in last sentence of second par.

Pub. L. 85-791, § 4(b), substituted in first sentence of third par., "file the record in the proceeding, as provided in section 2112 of title 28" for "certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the Commission or Board", and in second sentence of third par., struck out "and transcript" after "application", inserted "concurrently with the Commission or Board until the filing of the record", and struck out "upon the pleadings, testimony, and proceedings set forth in such transcript" after "make and enter".

Pub. L. 85-791, § 4(c), substituted in second sentence of fourth par., "transmitted by the clerk of the court to" for "served upon" and "shall file in the court the record in the proceeding, as provided in section 2112 of title 28" for "forthwith shall certify and file in the court a transcript of the record in the proceeding, as hereinbefore provided", and in third sentence of fourth paragraph substituted "such petition" for "the transcript" and inserted "determined as provided in section 1009(e) of title 5".

Pub. L. 85-791, § 4(d), substituted in fifth par., "Upon the filing of the record with it the" for "The".

1950—Act Dec. 29, 1950, amended section generally to allow the Attorney General to intervene and appear in any proceeding brought by any Commission or Board to enforce sections 13, 14, 18, and 19 of this title, but the amendment in nowise affects the jurisdiction of the Department of Justice to enforce these sections in the courts.

1938—Act June 23, 1938, inserted "in the Civil Aeronautics Authority where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938", and "authority" after "commission" wherever appearing.

1935—Act Aug. 23, 1935, changed the name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

1934—Act June 19, 1934, amended first par.

## CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

## EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

## EFFECTIVE DATE OF 1959 AMENDMENT

Section 2 of Pub. L. 86-107 provided that: "The amendments made by section 1 [to this section] shall have no application to any proceeding initiated before the date of enactment of this Act [July 23, 1959] under the third or fourth paragraph of section 11 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914 (38 Stat. 734, as amended; 15 U.S.C. 21) [this section]. Each such proceeding shall be governed by the provisions of such section as they existed on the day preceding the date of enactment of this Act [July 23, 1959]."

## TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board under this section were transferred to the Secretary of Transportation by section 1553(a)(4) of Title 49, Appendix, Transportation, effective Jan. 1, 1985.

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

## CROSS REFERENCES

Jurisdiction and powers of Federal Trade Commission, see sections 45 and 46 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21a of this title; title 49 App. section 1553.

§ 21a. Actions and proceedings pending prior to June 19, 1936; additional and continuing violations

Nothing herein contained shall affect rights of action arising, or litigation pending, or orders of the Federal Trade Commission issued and in effect or pending on review, based on section 13 of this title, prior to June 19, 1936: *Provided*, That where, prior to June 19, 1936, the Federal Trade Commission has issued an order requiring any person to cease and desist from a violation of section 13 of this title, and such order is pending on review or is in effect, either as issued or as affirmed or modified by a court of competent jurisdiction, and the Commission shall have reason to believe that such person has committed, used or carried on, since June 19, 1936, or is committing, using or carrying on, any act, practice or method in violation of any of the provisions of said section 13 of this title, it may reopen such original proceedings and may issue and serve upon such person its complaint, supplementary to the original complaint, stating its charges in that respect. Thereupon the same proceedings shall be had upon such supplementary complaint as provided in section 21 of this title. If upon such hearing the Commission shall be of the opinion that any act, practice, or method charged in said supplementary complaint has been committed,

used, or carried on since June 19, 1936, or is being committed, used or carried on, in violation of said section 13 of this title, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and serve upon such person its order modifying or amending its original order to include any additional violations of law so found. Thereafter the provisions of section 21 of this title, as to review and enforcement of orders of the Commission shall in all things apply to such modified or amended order. If upon review as provided in said section 21 of this title the court shall set aside such modified or amended order, the original order shall not be affected thereby, but it shall be and remain in force and effect as fully and to the same extent as if such supplementary proceedings had not been taken.

(June 19, 1936, ch. 592, § 2, 49 Stat. 1527.)

#### REFERENCES IN TEXT

Nothing herein contained, referred to in text, probably means nothing contained in act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

#### TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

#### CROSS REFERENCES

Exemptions of non-profit institutions from provisions of this section, see section 13c of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 7430; title 42 sections 6202, 8235f; title 49 section 10706.

#### § 22. District in which to sue corporation

Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

(Oct. 15, 1914, ch. 323, § 12, 38 Stat. 736.)

#### REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

#### FEDERAL RULES OF APPELLATE PROCEDURE

Rules not to be construed as extending or limiting jurisdiction of Court of Appeals, see rule 1, Title 28, Appendix, Judiciary and Judicial Procedure.

#### FEDERAL RULES OF CIVIL PROCEDURE

One form of action, see rule 2, Title 28, Appendix, Judiciary and Judicial Procedure.

Process, see rule 4.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at law or in equity, see rule 1.

#### CROSS REFERENCES

##### Venue—

Generally, see section 1391 et seq. of Title 28, Judiciary and Judicial Procedure.

Damage actions, see section 15 of this title.

#### § 23. Suits by United States; subpoenas for witnesses

In any suit, action, or proceeding brought by or on behalf of the United States subpoenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws may run into any other district: *Provided*, That in civil cases no writ of subpoena shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

(Oct. 15, 1914, ch. 323, § 13, 38 Stat. 736.)

#### REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

#### FEDERAL RULES OF CIVIL PROCEDURE

One form of action, see rule 2, Title 28, Appendix, Judiciary and Judicial Procedure.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at law or in equity, see rule 1.

Subpoena, see rule 45.

#### FEDERAL RULES OF CRIMINAL PROCEDURE

Subpoena, see rule 17, Title 18, Appendix, Crimes and Criminal Procedure.

#### § 24. Liability of directors and agents of corporation

Whenever a corporation shall violate any of the penal provisions of the antitrust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding \$5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

(Oct. 15, 1914, ch. 323, § 14, 38 Stat. 736.)

#### REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

#### § 25. Restraining violations; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties com-

plained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

(Oct. 15, 1914, ch. 323, § 15, 38 Stat. 736; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

#### REFERENCES IN TEXT

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

#### CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys of the United States". See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

#### FEDERAL RULES OF APPELLATE PROCEDURE

Stay or injunction pending appeal, see rule 8, Title 28, Appendix, Judiciary and Judicial Procedure.

#### FEDERAL RULES OF CIVIL PROCEDURE

Modification of section by rule 4, see note by Advisory Committee under rule 4, Title 28, Appendix, Judiciary and Judicial Procedure.

One form of action, see rule 2.

Process and injunctions, see rules 4 and 65.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at law or in equity, see rule 1.

#### CROSS REFERENCES

Restraining violations of trusts in restraint of import trade, see section 9 of this title.

Restraining violations of unlawful combinations and monopolies, see section 4 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4016 of this title.

§ 26. Injunctive relief for private parties; exception; costs

Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or

damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of subtitle IV of title 49, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission. In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

(Oct. 15, 1914, ch. 323, § 16, 38 Stat. 737; Sept. 30, 1976, Pub. L. 94-435, title III, § 302(3), 90 Stat. 1396.)

#### REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

#### CODIFICATION

"Subtitle IV of title 49," was substituted in text for "the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven" on authority of Pub. L. 95-473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

#### AMENDMENTS

1976—Pub. L. 94-435 inserted provision authorizing court to award costs, including attorneys' fees, to a successful plaintiff.

#### FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under rule 65, see note by Advisory Committee under rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

Injunctions, see rule 65.

One form of action, see rule 2.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at common law or in equity, see rule 1.

#### CROSS REFERENCES

Labor disputes, restriction of injunctive relief, see sections 52 and 107 of Title 29, Labor.

Venue of—

Damage actions, see section 15 of this title.

Proceedings against corporations, see section 22 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4016, 4304 of this title; title 46 App. section 1706.

§ 26a. Restrictions on the purchase of gasohol and synthetic motor fuel

(a) Limitations on the use of credit instruments; sales, resales, and transfers

Except as provided in subsection (b) of this section, it shall be unlawful for any person engaged in commerce, in the course of such commerce, directly or indirectly to impose any condition, restriction, agreement, or understanding that—

(1) limits the use of credit instruments in any transaction concerning the sale, resale, or transfer of gasohol or other synthetic motor fuel of equivalent usability in any case in which there is no similar limitation on trans-

actions concerning such person's conventional motor fuel; or

(2) otherwise unreasonably discriminates against or unreasonably limits the sale, resale, or transfer of gasohol or other synthetic motor fuel of equivalent usability in any case in which such synthetic or conventional motor fuel is sold for use, consumption, or resale within the United States.

(b) Credit fees; equivalent conventional motor fuel sales; labeling of pumps; product liability disclaimers; advertising support; furnishing facilities

(1) Nothing in this section or in any other provision of law in effect on December 2, 1980, which is specifically applicable to the sale of petroleum products shall preclude any person referred to in subsection (a) of this section from imposing a reasonable fee for credit on the sale, resale, or transfer of the gasohol or other synthetic motor fuel referred to in subsection (a) of this section if such fee equals no more than the actual costs to such person of extending that credit.

(2) The prohibitions in this section shall not apply to any person who makes available sufficient supplies of gasohol and other synthetic motor fuels of equivalent usability to satisfy his customers' needs for such products, if the gasohol and other synthetic fuels are made available on terms and conditions which are equivalent to the terms and conditions on which such person's conventional motor fuel products are made available.

(3) Nothing in this section shall—

(A) preclude any person referred to in subsection (a) of this section from requiring reasonable labeling of pumps dispensing the gasohol or other synthetic motor fuel referred to in subsection (a) of this section to indicate, as appropriate, that such gasohol or other synthetic motor fuel is not manufactured, distributed, or sold by such person;

(B) preclude such person from issuing appropriate disclaimers of product liability for damage resulting from use of the gasohol or other synthetic motor fuel;

(C) require such person to provide advertising support for the gasohol or other synthetic motor fuel; or

(D) require such person to furnish or provide, at such person's own expense, any additional pumps, tanks, or other related facilities required for the sale of the gasohol or other synthetic motor fuel.

(c) "United States" defined

As used in this section, "United States" includes the several States, the District of Columbia, any territory of the United States, and any insular possession or other place under the jurisdiction of the United States.

(Oct. 15, 1914, ch. 323, § 26, as added Dec. 2, 1980, Pub. L. 96-493, § 2, 94 Stat. 2568.)

#### SHORT TITLE

For short title of Pub. L. 96-493 as the "Gasohol Competition Act of 1980", see section 1 of Pub. L. 96-493, set out as a Short Title of 1980 Amendment note under section 1 of this title.

#### § 27. Effect of partial invalidity

If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

(Oct. 15, 1914, ch. 323, § 27, formerly § 26, 38 Stat. 740, renumbered Dec. 2, 1980, Pub. L. 96-493, § 2, 94 Stat. 2568.)

#### REFERENCES IN TEXT

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

§ 28. Repealed. Pub. L. 98-620, title IV, § 402(11), Nov. 8, 1984, 98 Stat. 3358

Section, acts Feb. 11, 1903, ch. 544, § 1, 32 Stat. 823; June 25, 1910, ch. 428, 36 Stat. 854; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Apr. 6, 1942, ch. 210, § 1, 56 Stat. 198; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Dec. 21, 1974, Pub. L. 93-528, § 4, 88 Stat. 1708, related to expedition of actions by the United States involving general public importance.

#### EFFECTIVE DATE OF REPEAL

Repeal not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

#### § 29. Appeals

(a) Court of appeals; review by Supreme Court

Except as otherwise expressly provided by this section, in every civil action brought in any district court of the United States under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted, in which the United States is the complainant and equitable relief is sought, any appeal from a final judgment entered in any such action shall be taken to the court of appeals pursuant to sections 1291 and 2107 of title 28. Any appeal from an interlocutory order entered in any such action shall be taken to the court of appeals pursuant to sections 1292(a)(1) and 2107 of title 28 but not otherwise. Any judgment entered by the court of appeals in any such action shall be subject to review by the Supreme Court upon a writ of certiorari as provided in section 1254(1) of title 28.

(b) Direct appeals to Supreme Court

An appeal from a final judgment pursuant to subsection (a) of this section shall lie directly to the Supreme Court, if, upon application of a party filed within fifteen days of the filing of a notice of appeal, the district judge who adjudicated the case enters an order stating that im-

mediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice. Such order shall be filed within thirty days after the filing of a notice of appeal. When such an order is filed, the appeal and any cross appeal shall be docketed in the time and manner prescribed by the rules of the Supreme Court. The Supreme Court shall thereupon either (1) dispose of the appeal and any cross appeal in the same manner as any other direct appeal authorized by law, or (2) in its discretion, deny the direct appeal and remand the case to the court of appeals, which shall then have jurisdiction to hear and determine the same as if the appeal and any cross appeal therein had been docketed in the court of appeals in the first instance pursuant to subsection (a) of this section.

(Feb. 11, 1903, ch. 544, § 2, 32 Stat. 823; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 9, 1944, ch. 239, 58 Stat. 272; June 25, 1948, ch. 646, § 17, 62 Stat. 989; Dec. 21, 1974, Pub. L. 93-528, § 5, 88 Stat. 1709.)

#### REFERENCES IN TEXT

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, referred to in subsec. (a), is known as the Sherman Act, and is classified to sections 1 to 7 of this title.

#### CODIFICATION

Act Mar. 3, 1911, which transferred the powers and duties of the circuit courts to the district courts, substituted "district court" for "circuit court".

Section was previously set out in both this section and in section 45 of former Title 49, Transportation.

#### AMENDMENTS

1974—Pub. L. 93-528 substituted provisions for appeals to the court of appeals from civil actions in district courts where equitable relief is sought, review by the Supreme Court of judgments of courts of appeals, and for direct appeals to the Supreme Court of cases involving general public importance, for provisions that appeals from final judgments of district courts lie to the Supreme Court only.

1948—Act June 25, 1948, amended section generally to strike out provisions relating to time for appeal, procedure, etc. See sections 2101 and 2109 of Title 28, Judiciary and Judicial Procedure.

1944—Act June 9, 1944, provided for certification of case to circuit court of appeals when there was no quorum of Justices of the Supreme Court qualified to participate in the consideration of the case and for designation of circuit judges in the event of disqualification from hearing the case.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Section 7 of Pub. L. 93-528 provided that: "The amendment made by section 5 of this Act [amending this section] shall not apply to an action in which a notice of appeal to the Supreme Court has been filed on or before the fifteenth day following the date of enactment of this Act [Dec. 21, 1974]. Appeal in any such action shall be taken pursuant to the provisions of section 2 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 29; [former] 49 U.S.C. 45) which were in effect on the day preceding the date of enactment of this Act."

#### EFFECTIVE DATE OF 1948 AMENDMENT

Section 38 of act June 25, 1948, provided that the amendment of this section shall be effective Sept. 1, 1948.

#### EFFECTIVE DATE OF 1944 AMENDMENT

The last paragraph of act June 9, 1944, provided: "This Act [this section] shall apply to every case pending before the Supreme Court of the United States on the date of its enactment [June 9, 1944]."

#### SHORT TITLE

Act Feb. 11, 1903, which enacted sections 28 and 29 of this title, is commonly known as the "Expediting Act".

#### CROSS REFERENCES

Direct appeals from decisions of three-judge courts, see section 1253 of Title 28, Judiciary and Judicial Procedure.

Time for appeal to Supreme Court, see section 2101 of Title 28.

#### § 30. Depositions for use in suits in equity; proceedings open to public

In the taking of depositions of witnesses for use in any suit in equity brought by the United States under sections 1 to 7 of this title, and in the hearings before any examiner or special master appointed to take testimony therein, the proceedings shall be open to the public as freely as are trials in open court; and no order excluding the public from attendance on any such proceedings shall be valid or enforceable.

(Mar. 3, 1913, ch. 114, 37 Stat. 731.)

#### FEDERAL RULES OF CIVIL PROCEDURE

Depositions and discovery, see rules 26 to 37, Title 28, Appendix, Judiciary and Judicial Procedure.

Masters, see rule 53.

One form of action, see rule 2.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at law or in equity, see rule 1.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1312 of this title.

#### § 31. Panama Canal closed to violators of antitrust laws

No vessel permitted to engage in the coastwise or foreign trade of the United States shall be permitted to enter or pass through the Panama Canal if such ship is owned, chartered, operated, or controlled by any person or company which is doing business in violation of the provisions of sections 1 to 11 of this title or of any other Act of Congress amending or supplementing the same. The question of fact may be determined by the judgment of any court of the United States of competent jurisdiction in any cause pending before it to which the owners or operators of such ship are parties. Suit may be brought by any shipper or by the Attorney General of the United States.

(Aug. 24, 1912, ch. 390, § 11, 37 Stat. 567.)

#### §§ 32, 33. Repealed. Pub. L. 91-452, title II, §§ 209, 210, Oct. 15, 1970, 84 Stat. 929

Section 32, act Feb. 25, 1903, ch. 755, § 1, 32 Stat. 904, granted immunity from prosecution to witnesses testifying or producing evidence, documentary or otherwise, in any proceeding, suit, or prosecution under section 1 to 11 of this title. See section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Section 33, act June 30, 1906, ch. 3920, 34 Stat. 798, provided that, under the immunity provisions of former section 32 of this title, immunity was to extend only to a natural person who, in obedience to a subpoena, testified or produced evidence.

#### EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

#### SAVINGS PROVISION

Repeal of sections by Pub. L. 91-452 not to affect any immunity to which any individual was entitled under sections by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

### § 34. Definitions applicable to sections 34 to 36

For purposes of sections 34 to 36 of this title—

(1) the term “local government” means—

(A) a city, county, parish, town, township, village, or any other general function governmental unit established by State law, or

(B) a school district, sanitary district, or any other special function governmental unit established by State law in one or more States,

(2) the term “person” has the meaning given it in subsection (a) of the first section of the Clayton Act [15 U.S.C. 12(a)], but does not include any local government as defined in paragraph (1) of this section, and

(3) the term “State” has the meaning given it in section 4G(2) of the Clayton Act (15 U.S.C. 15g(2)).

(Pub. L. 98-544, § 2, Oct. 24, 1984, 98 Stat. 2750.)

#### EFFECTIVE DATE

Section 6 of Pub. L. 98-544 provided that: “This Act [enacting sections 34 to 36 of this title, and provisions set out as a note under section 1 of this title] shall take effect thirty days before the date of the enactment of this Act [Oct. 24, 1984].”

§ 35. Recovery of damages, etc., for antitrust violations from any local government, or official or employee thereof acting in an official capacity

#### (a) Prohibition in general

No damages, interest on damages, costs, or attorney’s fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) from any local government, or official or employee thereof acting in an official capacity.

(b) Preconditions for attachment of prohibition; prima facie evidence for nonapplication of prohibition

Subsection (a) of this section shall not apply to cases commenced before the effective date of this Act unless the defendant establishes and the court determines, in light of all the circumstances, including the stage of litigation and the availability of alternative relief under the Clayton Act, that it would be inequitable not to apply this subsection to a pending case. In con-

sideration of this section, existence of a jury verdict, district court judgment, or any stage of litigation subsequent thereto, shall be deemed to be prima facie evidence that subsection (a) of this section shall not apply.

(Pub. L. 98-544, § 3, Oct. 24, 1984, 98 Stat. 2750.)

#### REFERENCES IN TEXT

For the effective date of this Act, referred to in subsec. (b), see Effective Date note below.

The Clayton Act, referred to in subsecs. (a) and (b), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title and to sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

#### EFFECTIVE DATE

Section effective thirty days before Oct. 24, 1984, see section 6 of Pub. L. 98-544, set out as a note under section 34 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 34 of this title.

§ 36. Recovery of damages, etc., for antitrust violations on claim against person based on official action directed by local government, or official or employee thereof acting in an official capacity

#### (a) Prohibition in general

No damages, interest on damages, costs or attorney’s fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) in any claim against a person based on any official action directed by a local government, or official or employee thereof acting in an official capacity.

(b) Nonapplication of prohibition for cases commenced before effective date of provisions

Subsection (a) of this section shall not apply with respect to cases commenced before the effective date of this Act.

(Pub. L. 98-544, § 4, Oct. 24, 1984, 98 Stat. 2750.)

#### REFERENCES IN TEXT

For effective date of this Act, referred to in subsec. (b), see Effective Date note below.

#### EFFECTIVE DATE

Section effective thirty days before Oct. 24, 1984, see section 6 of Pub. L. 98-544, set out as a note under section 34 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 34 of this title.

### CHAPTER 2—FEDERAL TRADE COMMISSION; PROMOTION OF EXPORT TRADE AND PREVENTION OF UNFAIR METHODS OF COMPETITION

#### SUBCHAPTER I—FEDERAL TRADE COMMISSION

Sec.

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|-----|--|
| 41. | Federal Trade Commission established; membership; vacancies; seal. |
| 42. | Employees; expenses.   |
| 43. | Office and place of meeting.                                       |
| 44. | Definitions.   |